

that will result in environmental protection that is superior to what would be achieved through compliance with current standard regulations and reasonably anticipated future regulations.

One of the projects that has been approved under Project XL is the New England Universities' Laboratories project. A Project XL proposal that the EPA exercise flexibility under RCRA was developed for the University of Massachusetts—Boston, Boston, MA, Boston College, Chestnut Hill, MA, and the University of Vermont, Burlington, VT (the “participating universities”). A Final Project Agreement approving the proposal was signed by the EPA, the participating universities, the MADEP and the Vermont Department of Environmental Conservation, on September 28, 1999. Pursuant to that agreement, the participating universities have been allowed to comply with Environmental Management Plans (EMPs) covering their laboratories in place of certain standard requirements for hazardous waste generators, during a trial period. In order to allow this experiment, the EPA adopted special regulations during 1999 which are set forth in 40 CFR 262.10(j) and 40 CFR 262.100–108. *See* 64 FR 52380 (September 28, 1999) (final rulemaking) and 64 FR 40696 (July 27, 1999) (proposed rulemaking). The reasons for approving the special EPA regulations are fully set forth in those rulemaking notices and will not be repeated here. Like the special regulation discussed in part II above in connection with the proposed ECOS project, the special EPA regulations were designed to enable the EPA to authorize State regulations that are different from the standard EPA regulations. Also like the ECOS project, the actual implementation of the XL project requires the adoption, and Federal authorization, of State regulations.

Following the adoption of EPA's special Project XL regulations, both Massachusetts and Vermont adopted regulations setting alternative standards for laboratories at the participating universities. The Vermont regulations were authorized by the EPA and became part of the Federally enforceable Vermont RCRA program on October 26, 2000. *See* 65 FR 64164. The Massachusetts regulations are in effect under State law and now have been submitted to the EPA to be authorized as part of the current update of the Massachusetts RCRA program.

#### *B. Why Is the EPA Proposing To Extend the Expiration Date of Its XL Project Regulations?*

The New England Universities' Laboratories XL project was initially planned to run for four years (September 1999 through September 2003). Thus the EPA project regulations currently have an expiration date of September 30, 2003. *See* 40 CFR 262.108.

The EPA conducted a mid-term evaluation of the project between September 2001 and September 2002. As set out in the mid-term evaluation report, the project has shown great success in some important areas: developing EMPs, training staff, increasing awareness, shifting attitudes and behaviors, improving the range of activities that determine compliance and emergency preparedness, and demonstrating that the environmental management system approach to managing laboratory waste is gaining hold and making progress. *See* Project in Excellence and Leadership: New England Universities' Laboratories Mid-Term Evaluation: Piloting Superior Environmental Performance in Labs, EPA 100–R–02–005 (September 2002), page 5. On the other hand, the project has not to date shown the expected successes in other areas such as chemical reuse and redistribution and pollution prevention. *Id.* The implementation of the EMPs proved to be complex, and took somewhat longer than anticipated, resulting in delays in aggressively focusing on reuse, redistribution and pollution prevention. However, efforts to encourage pollution prevention and “Green Chemistry” practices have begun to be more widely endorsed by faculty, and the EPA hopes and expects that they will bear fruit in the next several years.

Taking account of both the progress that has been made and the remaining issues, the EPA (with the concurrence of the MADEP and VTDEC) believes that the appropriate course of action is to extend the project's expiration date by three years, *i.e.*, to September 30, 2006. This will allow for a further period of evaluation, including a further test of whether the universities will succeed in their efforts to implement significant chemical reuse and redistribution and pollution prevention. In light of the success that has occurred in EMP development and implementation, the EPA believes that the continuation of this project should provide a superior level of environmental performance in comparison to an immediate return to standard RCRA regulation.

In addition, the EPA Office of Solid Waste currently is analyzing issues regarding the management of hazardous waste in laboratories, using a discussion group of EPA Headquarters and Regional personnel, which is expected to be followed by stakeholder meetings. This process may result in changes to the EPA requirements or the way the EPA interprets its requirements regarding laboratories. The proposed three-year extension of the New England Universities' Laboratories XL project will allow the three participating universities to continue to follow the alternative project requirements while the EPA considers whether to make changes in national policy. This will avoid those universities needing to terminate the project, prior to the EPA having a chance to consider whether standard RCRA requirements applicable to university laboratories should be changed. The continuation of the project also should provide information that is useful to the EPA as it analyzes the potential national impact of making changes regarding the management of hazardous waste in laboratories.

#### *C. What Is the Proposed Federal Regulation Change?*

The proposed Federal regulation change will extend the expiration date in 40 CFR 262.108 from September 30, 2003 to September 30, 2006. The other special EPA regulations adopted to allow the implementation of the New England Universities' Laboratories XL project will stay the same. The proposed regulation change is set out at the end of this document. The EPA proposes to have this regulation change take effect immediately upon its promulgation. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change. Massachusetts and Vermont also are in the process of changing their State regulations to extend the expiration date of this XL project to September 30, 2006. The EPA and other signatories also are proposing to amend the Final Project Agreement for this XL project to extend the expiration date, with annual reporting obligations also being extended and all other provisions of the agreement remaining the same.

#### *D. What Will Be the Effect of the Proposed Federal Regulation Change?*

The proposed change to the Federal regulations will enable the EPA to authorize the Massachusetts and Vermont regulations governing the New England Universities' Laboratories XL project through September 30, 2006. In Vermont's case, the State regulations